

App. No. 10/369,336

APPEAL BRIEF

June 5, 2007



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Arnold G. Klein

In the Application of: Arnold G. Klein

Ser.No.: 10/753,660

Filed: January 9, 2004

For: INSECT BARRIER WITH DISPOSABLE ADHESIVE MEDIA

Art Unit: 3643

Examiner: Kurt C. Rowan

To: Board Of Patent Appeals and Interference
 U.S. Patent and Trademark Office
 P.O. Box 1450
 Alexandria VA 22313-1450

APPEAL BRIEF

The Applicant submits the following for its brief on appeal and respectfully requests consideration of same. The Applicant requests withdrawal of the rejections made and that the Application be placed in line for Allowance.

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I. **REAL PARTY IN INTEREST**

The real party in interest in the instant application is the Applicant Inventor, Arnold G. Klein.

II. **RELATED APPEALS AND INTERFERENCES**

The Applicant is unaware of any related appeals or interferences with regard to the application.

A CIP patent application - INSECT BARRIER WITH DISPOSABLE ADHESIVE MEDIA, Serial No. 11/406,865 was filed April 19, 2006. The First Office Action for this CIP Application was sent on December 11, 2006. A response to the First Office Action for the CIP application was sent to the Examiner, Kurt C. Rowan on March 15, 2007. **

** Information discovered and disclosed in this response to the CIP First Office Action is pertinent to this appeal.

III. **STATUS OF CLAIMS**

Claims 1 – 19 are pending in this application. Claims 1 – 5, 18 and 19 are rejected. Claims 6 – 17 were withdrawn from consideration. Claims 1 – 9, 16, 18 and 19 are appealed. **

** Applicant requested reinstatement of the claims previously withdrawn that were dependant directly or indirectly on claim 1, namely claims 6 – 9 and 16 on the response filed September 21, 2006. In the Final Office Action mailed on December 12, 2006, Examiner made no specific comment related to this request.

IV. **STATUS OF AMENDMENTS**

A Final Office Action finally rejecting claims 1 – 5, 18 and 19 was mailed on December 12, 2006. An amendment in response to the Final Office Action was sent on March 28, 2007 and was entered by the Examiner on April 13, 2007. A Notice of Appeal was mailed on April 12, 2007.

V. **SUMMARY OF CLAIMED SUBJECT MATTER**

Independent claim 1 defines an insect barrier device 11 (Fig. 1, specification page 5, line 2) for use in preventing insect contamination of nectar type bird feeders, said insect barrier device 11 including a disposable, water resistant media 27 (Fig. 3, specification page 6, line 2) having an integral mounting hole 19 (Fig. 1, specification page 5, line 4) wherein said media is coated on at least one surface with a non-drying adhesive layer 13 (Fig. 1, specification page 5, line 3 – 4) being sufficiently tacky to act as a physical barrier 11 (Fig. 6, specification page 6, lines 18 - 20) to the passage of insects, and wherein said coated media 11 is adapted to be placed via said mounting hole 19 on a support 31 (Fig. 6, specification page 6, lines 17 – 24) for the nectar type bird feeder 33 and a means for friction fitting the coated media 11 elastically (Fig. 6, specification page 6, lines 17 – 24) on the support for the nectar type bird feeder, wherein said coated media is adapted to act as a physical barrier 11 (Fig. 6, specification page 6, lines 18 - 20) to block insect crawling routes along said support for said bird feeder.

VI. **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

1. Specification objected for failing to provide proper antecedent basis under 37 CFR 1.75 (d)(1) and MPEP § 608.01(o) for the claimed subject

matter. Correction of the following is required: “friction fitting” the coated media “elastically” on the support.

2. Claim 19 is objected to under 37 CFR 1.75 (c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.
3. Whether claims 1, 2, 5 and 18 are unpatentable under 35 U.S.C. 102 (b) as being anticipated by Erickson (US 1,405,822).
4. Whether claim 19 is unpatentable under 35 U.S.C. 103 (a) over Erickson (US 1,405,822) ** The Examiner must have made an error here, since the Erickson patent does not have a “column 4” - he must mean the patent to Olson (US 4,800,671)
5. Whether claims 3 - 4 are unpatentable under 35 U.S.C. 103 (a) over Erickson (US 1,405,822) as applied to claim 1, and further in view of Olson (US 4,800,671).
6. Response to Examiners Arguments – Final Office Action

VII. **ARGUMENT**

Specification objected for failing to provide proper antecedent basis.

This rejection was addressed in the Amendment in response to the Final Office Action entered by the Examiner on April 13, 2007:

The last paragraph on page 6 of the specification was amended (underlined text) as follows:

The ant deterring device **11** is provided with a center hole at **19** for interference fitting with the feeder hanging hook **31** or the mounting stem **41**. It is desirable that the device **11** mounting hole **19** have some resilient elasticity to form a continuous contact point or impassible barrier at the mounting point. The vinyl, Tyvek® and thin-flexible foam media may be preferred for the device **11** as they will provide for

some elastic expansion and securing friction of the mounting hole 19. Thus, the ant deterring device 11 is provided with means for friction fitting the media elastically on a support for a nectar type bird feeder. An alternative configuration not shown, would use a flexible center grommet or other means to hold the ant deterring device 11 directly to the feeder hanging cord 47 or alternative feeder hanging hardware.

Claim 19 is objected to as being of improper dependent form for failing to further limit the subject matter of a previous claim.

This rejection was answered in the Amendment in response to the Final Office Action entered by the Examiner on April 13, 2007:

With regard to the objection to claim 19, Applicant respectfully submits that the language of claim 19 that the "disposable media is elastic" is not recited in claim 1. In particular, claim 1 recites means for friction fitting the coated media elastically on the support, while claim 19 recites that the disposable media itself is elastic.

This distinction may be important in the event that a compressible cord is used to hang the nectar feeder (see instant application patent Fig. 14). The insect barrier devices may be affixed to a cord of this type.

Rejection under 35 U.S.C. 102 (b) over Erickson (US 1,405,822).

As indicated previously, Applicant's claim 1 defines - an insect barrier device 11 for use in preventing insect contamination of nectar type bird feeders, said insect barrier device 11 including a disposable, water resistant media 27 having an integral mounting hole 19 wherein said media is coated on at least one surface with a non-drying adhesive layer 13 being sufficiently tacky to act as a physical barrier 11 to the passage of insects, and wherein said coated media 11 is adapted to be

placed via said mounting hole 19 on a support 31 for the nectar type bird feeder 33 and a means for friction fitting the coated media 11 elastically on the support for the nectar type bird feeder, wherein said coated media is adapted to act as a physical barrier to block insect crawling routes along said support for said bird feeder.

Erickson (US 1,405,822) claim 1 defines – *An insect trap, comprising a flattened dome-shaped plate and means for supporting the same beneath a furniture leg, said plate carrying on its lower surface a coating of adhesive substance adapted to capture insects traversing the same.*

Erickson's claim 2 defines – *The combination of a flattened dome-shaped plate formed with a central hole and a disk formed with a central hole and adapted to be mounted within and beneath said plate, said disk having its outer lower surface coated with an adhesive substance.*

The instant invention is specifically adapted to be mounted on a support for a nectar type bird feeder. The Erickson Insect Trap is specifically adapted to be mounted on a furniture caster. These are distinct functional limitations that set these devices apart. There is no suggestion for any other insect trapping application in Erickson's patent. Neither of these insect deterring devices are specified for a non-specific or general purpose application.

The specific differences, both structural and compositional, that set these devices apart are as follows:

Erickson's Insect Trap cannot be friction fitted elastically on a typical nectar feeder support – Looking at the Erickson patent Figures 2 – 4 (see, Exhibit No. 1 – Erickson Patent Figures) it is clear that the center mounting hole for Erickson's trap member 16 and paper ring 20 are simply too large to "friction fit" with continuous contact on a feeder hanging rod 5/32" or typically smaller, irregular cross section

feeder hanging cord. It is clearly shown in the Erickson patent figures that the trap member 16 and paper ring 20 have a center hole considerably larger than the caster stem 11, and that they are held in place by being very loosely fitted over the caster stem 11, and there secured by the sandwiched or compressed (furniture weight) between the caster horn 15 and the underside of the trap member 16. Apparently Erickson sized this hole so that his Insect Trap would also fit on wooden caster stems. A typical nectar feeder support structure has no transition feature or assembly of parts (as the furniture caster does) to hold Erickson's trap member 16 or paper ring 20 in position. Further, there is no assembly of mating parts with surfaces that would cover over (to make an impassible barrier) the oversized hole in the trap member 16 and paper ring 20. It is for this reason that the insect barrier 11 have sufficient elasticity to allow the device mounting hole 19 to be stretched over the nectar feeder support. The instant application Figures 5 and 6 show clearly the **convex shape distortion** of the insect barrier device 11 as it is elastically stretched and thereby held in place over the feeder rod 31 (see Exhibit no. 2 – Instant Application Figures 5 and 6). **

** The instant application discloses additional design embodiments with an interposed mounting stem, having an integral media supporting platform and shroud that protects the “adhesive coated inserts” from dust and rain (Fig. 10, Fig. 11, Fig. 19, and Fig. 21). The adhesive coated inserts that are used in these designs are protected from dust and rain, and supported by an integral platform, so they can be constructed using a paper media.

Erickson's Insect Trap is not adequately disclosed for the adhesive to be pre-applied

There is no enabling disclosure or teaching in the Erickson patent related to protecting the adhesively (moist glue) coated surfaces of his trap member 16 or paper ring 20. This omission supports the argument that the trap member 16 and paper ring 20 were not adhesively pre-coated. If the Erickson trap member 16 and paper ring 20 were to be supplied with an adhesive coating, then protecting the

adhesive surfaces from inadvertent contact during handling would have been a practical necessity. You can still purchase Erickson's Insect Trap today. They are not supplied with any adhesive or adhesive coating (see Exhibit No. 3 – Ant Trap for Caster – currently sold).

Erickson does not specify a non-drying adhesive –

Erickson, in lines 56 – 65 of his specification states that: *The inner surface of the trap member 16 preferably is coated with an adhesive substance such as moist glue as shown by the stippling in Figure 3. The adhesive substance may be applied directly to the inner surface of the trap member or it may be applied to a vehicle such as a paper disk or ring 20, Figure 4, and said ring may be applied manually to the inner surface of the trap member.*

The Erickson trap member 16 or paper ring may be coated (presumably by the homemaker) with an adhesive substance such as “moist glue”. Erickson never discloses a non-drying adhesive or even a slow drying adhesive, in his patent. Of course, a typical homemaker is not likely to have any ready supply of any non-drying adhesive. Erickson's “moist glue” adhesive is a substance that would be more readily available to his Insect Trap end user. This is likely to be the reason that in actual application, Erickson's Insect Trap or a variant thereof was as likely to be mounted facing upward and filled with borax or coated with oil by the homemaker (see Exhibit No. 4 – Ant Proof Caster for “Sellers” Kitchen Cabinets, Saturday Evening Post, May 6, 1922). Erickson's Insect Trap is a single element (trap member 16) that is specifically adapted to fit within the parts of a furniture caster assembly. The trap member 16 serves as a platform onto which the homemaker can directly apply any readily available “tacky” substance to trap insects. Alternatively, the trap member may be used to provide support for a paper disk 20 onto which the homemaker has applied a “tacky” substance.

The Examiner has acknowledged that Applicant has stated that the “means for” clause in claim 1 is intended to invoke 35 USC 112, sixth paragraph.

The Erickson Insect Trap, whether it is the trap member 16 or trap member and paper disk 20 are supported on the furniture caster by being very loosely fitted over the caster stem 11, and there secured by the sandwiched or compressive force (furniture weight) between the caster horn 15 and the underside of the trap member 16 (see, Exhibit No. 1 – Erickson Patent Figures). Examiner refers to this as “interference” or “frictional” fit that he has declared equivalent for the purposes of the Final Office Action. Erickson does not use either of these terms in his patent disclosure. It is very clearly seen when comparing the Erickson Patent Figures (Exhibit No. 1) and the instant application Figures 5 and 6 (Exhibit No. 2) that the respective devices are not secured in an equivalent manner. The insect barrier device 11 is held in place on the non-adapted feeder hook 31 by the residual elastic force (parallel or in-line with the media) exerted by the stretched mounting hole 19. In contrast, the Erickson trap member (that has a mounting hole diameter considerably larger than the diameter of the caster stem) is held in place by being sandwiched between the mating parts of the caster assembly. The Examiner asserts that the flexible gasket 19 made of rubber or felt, used by Erickson to stabilize his trap member, results in his “coated media is therefore elastically fitted on the support which is leg 10”. Clearly, whether the flexible gasket 19 is present or not, the Erickson trap member 16 and paper ring 20 are held in place by the compressive force (perpendicular to the media) between the mating parts of the caster assembly.

The Examiner asserts: “The patent to Erickson can be considered to read on the present claims even invoking 35 USC 112, sixth paragraph since the present specification discloses on page 10, lines 16-21, that *“there are any number of other common means, including clips, resilient bands, frictional contact or groove interference of a cutout hole that may be used to mount and hold insect deterring media in these devices”*. This section of the instant application specification is

clearly referring to the insect barrier device embodiments (Claim 10) that have a specifically adapted, and “interposed” mounting stem element (mounting stem 41 (Fig. 8), mounting stem 59 (Fig. 9), ant deterring device 71 with integral dust shroud 73 (Fig. 11), mounting stem 79 (Fig. 12), ant deterring device 91 (Fig. 16), mounting stem 161 (Fig. 20)). This specification section cited by the Examiner is clearly directed to “other common means” for holding the insect deterring media in these **interposed mounting stem devices**. These interposed (tension resisting) mounting stems have no structural resemblance or application that is similar to a furniture caster.

The Examiner asserts that the “interference fit recited in the specification is not supported with any further discussion that would differentiate over Erickson”. Applicant directs his attention to the last paragraph on page 6 of the (non-amended) specification:

The ant deterring device 11 is provided with a center hole at 19 for interference fitting with the feeder hanging hook 31 or the mounting stem 41. It is desirable that the device 11 mounting hole 19 have some resilient elasticity to form a continuous contact point or impassible barrier at the mounting point. The vinyl, Tyvek® and thin-flexible foam media may be preferred for the device 11 as they will provide for some elastic expansion and securing friction of the mounting hole 19. An alternative configuration not shown, would use a flexible center grommet or other means to hold the ant deterring device 11 directly to the feeder hanging cord 47 or alternative feeder hanging hardware.

Rejection of claim 19 under 35 U.S.C. 103 (a) over Erickson (US 1,405,822). **

** The Examiner must have made an error here, since the Erickson patent does not have a “column 4” - he must mean the patent to Olson (US 4,800,671)

The Examiner asserts that “it would have been obvious to employ an old and well known elastic material to wrap around a tree so that the barrier can be compressed in size when not applied to a support”.

In Olson’s patent disclosure, column 2, lines 22 – 25 he states:

Furthermore, by producing the basic strip from a flexible, pliable material, the strip will accommodate the rough surface of many trees to form a barrier preventing insects from passing under the strip.

Nowhere in the patent disclosure of Olson does he use the term “elastic”. Olson is very specific in his specification that he wants his trapping band 10 to be very flexible and pliable in order to accommodate the “rough surface of many trees”. It is not desirable for the trapping band 10 to be “elastic” as this property may result in the end user stretching the band when installing it on a tree. Any elastic stretching of the trapping band during installation will tend to make the band bridge over the surface irregularities and contour depressions that are typical of many trees. This loss of surface contact between the band and the tree (allowing insects to pass under the band) is exactly what Olson is trying to avoid. Also, in Olson’s patent disclosure, column 2, lines 25 – 31 he states:

It has also been found that a modified form of the invention can be provided wherein a non-toxic adhesive can be applied to the reverse face of the strip so that it can be attached directly to the tree by adhesive action, thereby avoiding the need for any kind of fastening means to hold the band in place on the tree.

Any elastic stretching of this “modified” trapping during installation would eventually result in the band pulling away from the tree surface as it tends to “creep” back to its un-stretched or relaxed condition. The Examiners assertion that “the barrier can be compressed in size when not applied to a support” is not supported in Olson’s patent disclosure. This proposed stretching of his insect trapping band to facilitate compact storage is not advised - since it may result in the disruption of the insect trapping adhesive 20 and could result in the adhesive running out of the recessed groove 15.

Rejection of claim 3 –4 under 35 U.S.C. 103 (a) over Erickson and in view of Olson.

The Examiner asserts “In reference to claim 3, it would have been obvious to provide Erickson with a layer of release paper as shown by Olson for the purpose of preventing the adhesive from sticking to non-target surfaces”. As discussed earlier, the Erickson trap member 16 and paper ring 20 do not seem to have been adhesively pre-coated. Also, in Olson’s patent disclosure, column2, lines 25 – 34 he states:

It has also been found that a modified form of the invention can be provided wherein a non-toxic adhesive can be applied to the reverse face of the strip so that it can be attached directly to the tree by adhesive action, thereby avoiding the need for any kind of fastening means to hold the band in place on the tree. It has, in this form of the invention, been found, however, that a layer of release material will have to be applied to the second layer of adhesive to permit rolling of the material for shipment and handling.

It is clear from this description and Olson’s patent Fig. 3 (see, Exhibit No. 5 – Olson Patent Figures) specification, column 3, lines 57 – 60, that the protective paper 140 is applied to the contact adhesive 130, not the insect trapping adhesive 120. This differs significantly from the present invention, where the non-drying adhesive layer 25 is protected by the direct contact of the low adhesion contact paper 23 (present application, Fig. 3, specification page 6, lines 1 –3). This capability for direct application of the low adhesion contact paper with the non-drying adhesive is due to the relatively thin layer of adhesive that can be used in the instant invention, to deter ants. Some non-drying adhesives, and especially thicker applications as specified by Olson will adhere to even the best low adhesion paper. Virtually, all contact adhesive coated products come with a protective layer of low adhesion paper. It is a ubiquitous practice and a practical requirement for an almost

unlimited variety of products. Olson uses his release material 140 in exactly this same manner.

The Examiner states: "In reference to claim 4, Olson shows a handling region 11, 13. It would have been obvious to provide Erickson with a handling region as shown by Olson to keep the adhesive from contacting a user's hand".

Olson's insect trapping band does have uncoated regions 11 and 13 as can be seen in his patent Fig. 1. Olson's patent disclosure does not identify these areas as handling regions. The recessed groove 15 formed in the center of Olson's band results in the adjacent (uncoated) land surfaces 11. The extended width of the band and the land surface 11 provides a safety margin, that when the band is installed, the insect trapping adhesive 20 will not run out onto the tree. The Examiner could identify any uncoated region on Olson's band or any other non-drying adhesive based trap as a "handling region". Of course, it is practically impossible to expect that any non-drying adhesive type of insect trapping or barrier device would be coated on every surface. The present application Fig. 1, shows a specifically adapted handling region not disclosed in the Olson or Erickson references.

It is not particularly surprising that prior art references can be found with analogous elements to the instant invention – the most basic embodiment – consisting of only two elements. However, even when they are combined, these references are not suggestive or practically adaptable for the application of protecting nectar feeders from ant contamination. Applicant notes that despite the long felt need for a (low maintenance, non-insecticide based) insect barrier device for preventing ant contamination of nectar type bird feeders -as discussed in detail in the instant application Background of the Invention - no one has adequately solved this problem. None of the prior art devices for solving this well known problem have used or suggested the use an adhesive (non-drying or otherwise) coated media. This coupled with the fact that the Erickson patent issued in 1922 argue strongly against the obviousness claims rejections.

Response to Examiners Arguments – Final Office Action

The Examiner states: “Applicant has provided no structure to differentiate the contention that the Erickson device is a trap while the present invention is a barrier”. This distinction between a trap and a barrier is presented in the last paragraph of the present application Summary of the Invention. This difference is due in large part to the slow and somewhat methodical exploratory behavior of ants. If the insect pests that contaminate nectar feeders were something other than ants, it is likely that the non-drying adhesive coated media would trap them in greater numbers.

The Examiner states: “In response to applicant’s argument that the references fail to show certain features of applicant’s invention, it is noted that the features upon which applicant relies (i.e., the insect barrier device is positioned between the nectar feeder and feeder support) are not recited in the rejected claim(s).

There are essentially three (3) design embodiments of the Insect Barrier device disclosed in the instant application:

1. The **first embodiment** is adapted to fit on or over a typical nectar feeder support structure, as specified in the preamble and section(s) (a) and (b) of **Claim 1**.
2. The **second embodiment** is adapted to be placed between (or “interposed between”) the nectar feeder and feeder support (using a specifically adapted mounting stem), as specified in **Claim 10**, section (c).
3. The **third embodiment** is for a nectar feeder specifically adapted to hold the device(s) of Claim 1 or Claim 10, as specified in **Claim 16 and Claim 17**.

It would be **technically inaccurate** to insert the language “the insect barrier device is positioned between the nectar feeder and feeder support” into applicant’s Claim 1, because this **first embodiment** of the insect barrier is located on but not actually

between the nectar feeder and the feeder support structure. The Examiner states that the “recitation of the nectar type bird feeder has not been given patentable weight because the recitation occurs in the preamble”. It is clear looking at applicants Claim 1, that the Examiner is incorrect when he states: “The nectar feeder and the support for the feeder are not positively recited in the present claims” (see instant invention, Claim 1).

An insect barrier device for use in preventing insect contamination of nectar type bird feeders, said insect barrier device including:

- a. a disposable, water-resistant media having an integral mounting hole, wherein said media is coated on at least one surface with a non-drying adhesive layer, said non-drying adhesive layer being sufficiently tacky to act as a physical barrier to the passage of insects, and wherein said coated media is adapted to be placed via said mounting hole on a support for the nectar type bird feeder; and
- b. a means for friction fitting the coated media elastically on the support for the nectar type bird feeder, wherein said coated media is adapted to act as a physical barrier to block insect crawling routes along said support for said bird feeder.

All of the design embodiments of the present invention use the same basic component, a non-drying adhesive coated, disposable media. It was recognized by the applicant during the testing and development of the invention, that by selecting an elastic (or resilient) weather resistant media, that the **first embodiment** of the invention would not by necessity require a mounting stem (element) because it could be adapted to fit directly on a support for a nectar type bird feeder.

VIII. **CLAIMS APPENDIX**

Copy of Claims Involved in the Appeal:

1. An insect barrier device for use in preventing insect contamination of nectar type bird feeders, said insect barrier device including:
 - a. a disposable, water-resistant media having an integral mounting hole, wherein said media is coated on at least one surface with a non-drying adhesive layer, said non-drying adhesive layer being sufficiently tacky to act as a physical barrier to the passage of insects, and wherein said coated media is adapted to be placed via said mounting hole on a support for the nectar type bird feeder; and
 - b. a means for friction fitting the coated media elastically on the support for the nectar type bird feeder, wherein said coated media is adapted to act as a physical barrier to block insect crawling routes along said support for said bird feeder.
2. The insect barrier device of claim 1, wherein the device is constructed of vinyl film, foam sheet, foil, high density polyethylene, cork, polyester film, polyethylene terephthalate or any other commonly used, water-resistant, disposable media.
3. The insect barrier device of claim 1, wherein said barrier device includes a protective covering layer of low adhesion or contact paper.
4. The insect barrier device of claim 1, wherein said barrier device media has a handling region that is free from any adhesive coating.
5. The insect barrier device of claim 1, wherein the device is adapted to be secured in a position interposed between said nectar type bird feeder and said support for said bird feeder by means of a specially adapted mounting stem.

6. The insect barrier device of claim 1, wherein the disposable media is a cup form, with applied non-drying adhesive said cup being mounted in an open end down position to prevent collection of water, dust or other debris.
7. The insect barrier device of claim 6 wherein the formed cup is provided with said mounting hole that is friction fitted over a feeder hanging cord, mounting hook, pole or other feeder supporting structure.
8. The insect barrier device of claim 6 wherein a resilient washer or grommet is located at the cup cutout hole to provide an elastic interference-fit with a feeder hanging cord, hook, pole, or other feeder supporting structure.
9. The insect barrier device of claim 7, wherein the cup form is secured over a mounting stem that is specifically adapted.
10. An insect barrier device for use in preventing insect contamination of nectar type bird feeders, said insect barrier device including:
 - a. an inverted dome or cup shaped shroud with incorporated means for holding a disposable media insert, said media insert is coated on at least one surface with a non-drying adhesive layer, said non-drying adhesive layer being sufficiently tacky to act as a physical barrier to the passage of insects; and
 - b. a means to position and secure said media insert within the insect barrier device, wherein said coated media insert is adapted to act as a physical barrier to block insect crawling routes through said device; and
 - c. a means to position and secure the insect barrier device interposed between the nectar type bird feeder and a feeder support, wherein said insect barrier device is adapted to act as a physical barrier to block insect crawling routes to said bird feeder.

11. The insect barrier of claim 10, wherein the non-drying adhesive coated media insert is secured in position by means of a lower contact adhesive surface coating applied on the opposite side of the insect barrier media, and placed in contact with an inside surface or supporting structure of the insect barrier device.
12. The insect barrier device of claim 10 wherein the disposable media insert is in the form of a tape, the exposed tape surface having an adhesive layer sufficiently tacky to act as a physical barrier to the passage of insects.
13. The insect barrier device of claim 12 wherein the tape and or tape core is interference fitted to a specially adapted mounting stem fitted within or formed integrally with the insect barrier device dust cover.
14. The insect barrier device of claim 10 wherein the disposable media insert has an application of diatomaceous earth.
15. The insect barrier device of claim 10 wherein the disposable media insert includes a protective covering layer of low adhesion or contact paper and/or has a handling region with no adhesive or diatomaceous earth applied.
16. A nectar type bird feeder, utilizing the device of claim 1, said bird feeder including:
 - a. a housing for holding nectar, said housing including one feeder port or opening; and
 - b. said feeder having a specifically incorporated means for holding the insect barrier device, said device having a disposable media, said media being coated on at least one surface with a non-drying adhesive layer, said non-drying adhesive layer being sufficiently tacky to act as a physical barrier to the passage of insects; and

- c. a means to position and secure the insect barrier device, wherein said insect barrier device is adapted to act as a physical barrier to block insect crawling routes to said bird feeder.

17. A nectar type bird feeder, utilizing the device of claim 10, said bird feeder including:

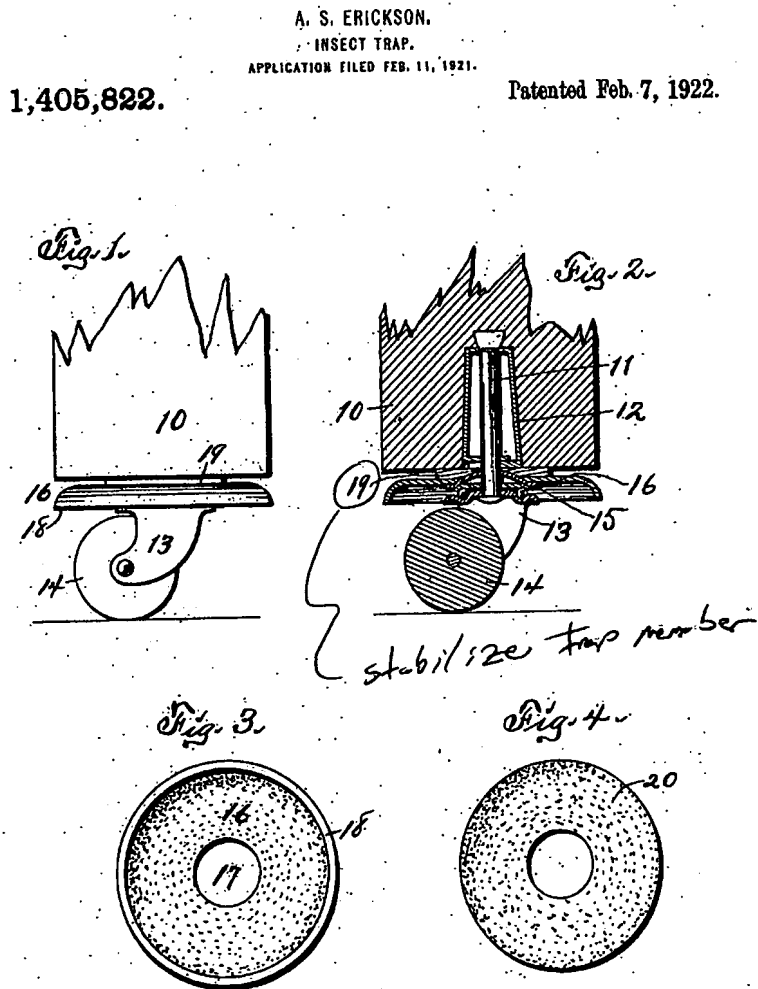
- a. a housing for holding nectar, said housing including one feeder port or opening; and
- b. said feeder having a specifically incorporated means for holding the insect barrier device, said device having a disposable media, said media being coated on at least one surface with a non-drying adhesive layer, said non-drying adhesive layer being sufficiently tacky as to act as a physical barrier to the passage of insects; and
- c. a means to position and secure the insect barrier device, wherein said insect barrier device is adapted to act as a physical barrier to block insect crawling routes to said bird feeder.

18. The insect barrier device of claim 1, wherein said disposable media has a uniform cross-section.

19. The insect barrier device of claim 1, wherein said disposable media is elastic.

IX. EVIDENCE

Exhibit 1. – Erickson Patent Figures



Inventor:
Alfred S. Erickson.
By *John A. Burch*
Att'y

Exhibit 2. – Instant Application – Patent Figures 5 and 6

FIG. 5

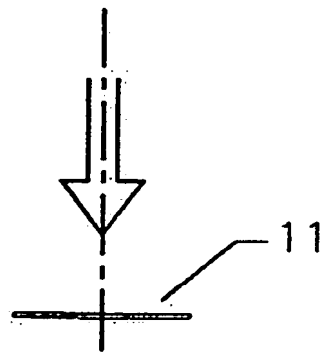
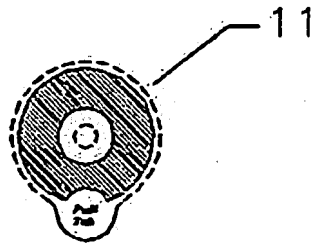


FIG. 6

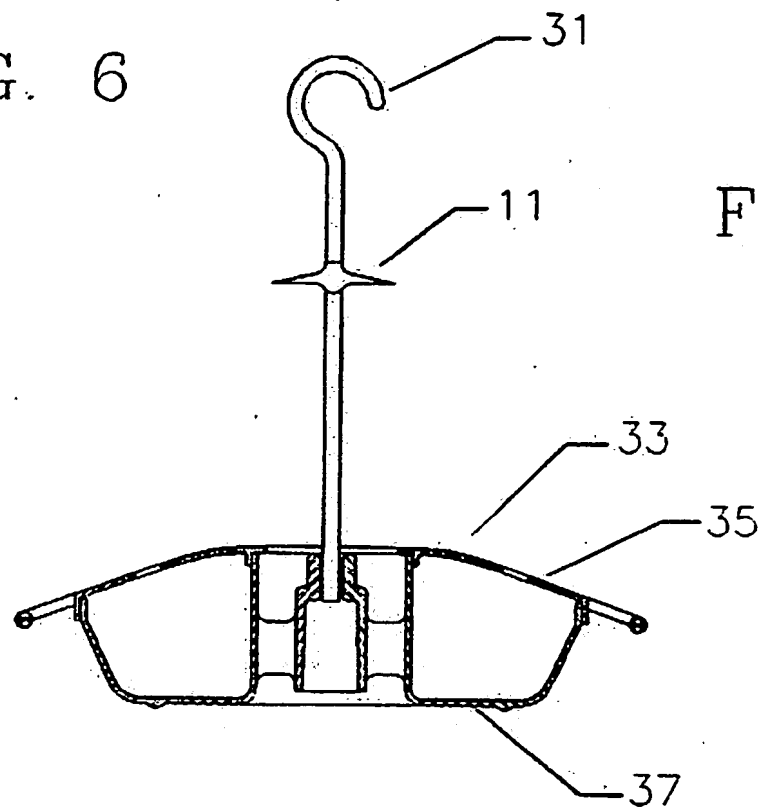
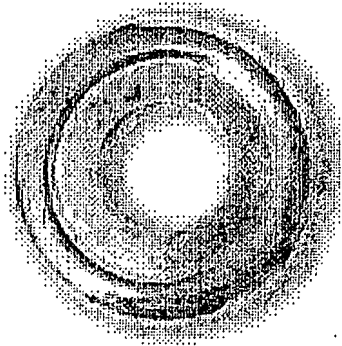


FIG.

Exhibit 3. – Ant Traps for Casters -currently sold

D. DLAWLESS HARDWARE



ANTI TRAP REPLACEMENT

Replacement for the ant traps used on many Hoosier-type cabinets. Center hole large enough to fit over most wood caster shanks. Works well with our caster C10-B23. Slips over post of caster like a washer and was supposedly used to prevent ants from climbing up cabinet leg for goodies contained therein. Upside-down climbing on a polished surface evidently sent them bouncing on their hard little heads.

Diameter: 1 7/16" (29 mm)

Center Hole Diameter: 5/8" (22.3 mm)

Finish: polished brass

Hoosier Cabinet Ant Trap Replacement LQ-CR0138-PB-A LQ-CR0138-PB-A \$0.27



(www.dlawlesshardware.com/hocaanttrrel.html)

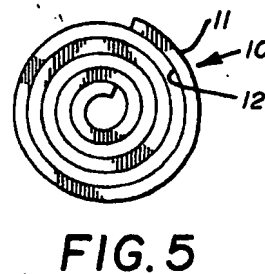
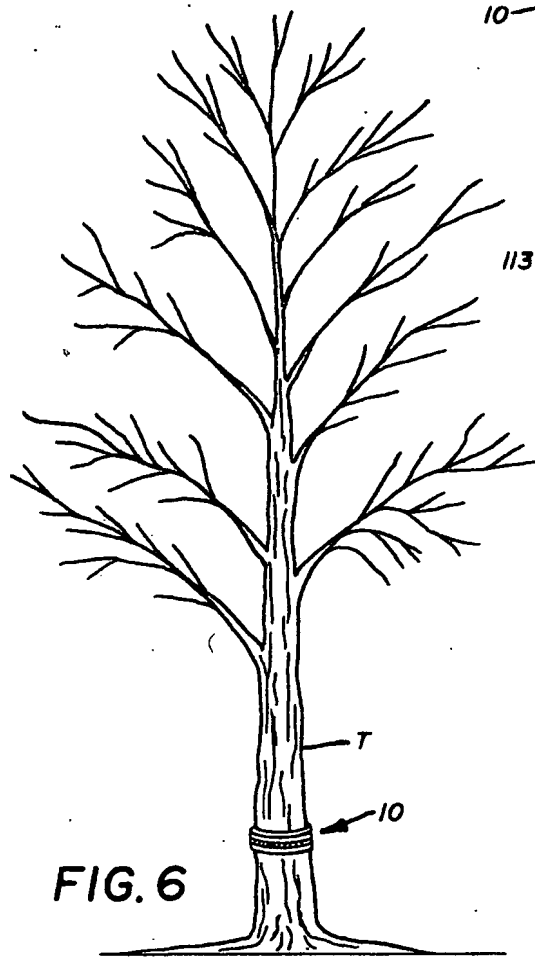
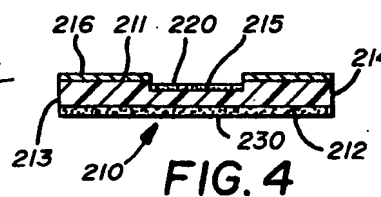
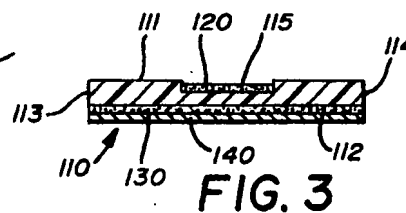
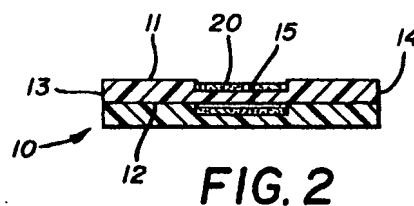
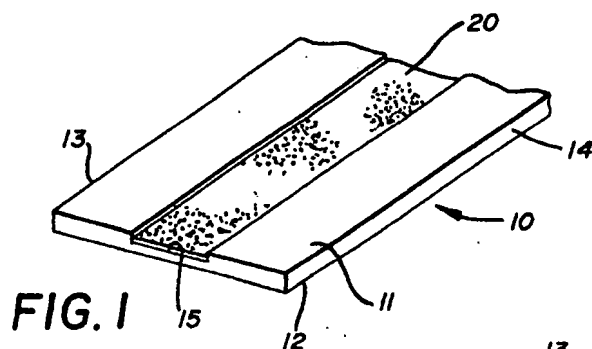
[illegible]

Exhibit 5. – Olson Patent Figures

U.S. Patent

Jan. 31, 1989

4,800,671



X. RELATED PROCEEDINGS

None